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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/647,992 | 08/26/2003 | Shawn D. Spitzer | 4220-A1C | 2489 |

7590 04/09/2004

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EXAMINER

GARRETT, ERIKA P

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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3636

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,992

Applicant(s)

SPITZER, SHAWN D.

Examiner

Erika Garrett

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) 16-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>3/30/04</u> . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>08272003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I figures 1-7 and 9; species II figures 8 and 10-13.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claims 1 & 9 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Michael Goltry on 3/30/04 a provisional election was made without traverse to prosecute the invention of species I, claims 1-6, 10-14 and the cancellation of claims 16-22 was made by M. Goltry. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claims 16-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species II, their being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 03302004.

Applicant's election without traverse of species I in Paper No. 03302004 is acknowledged.

Claim Objections

Claim 8 is objected to because of the following informalities: claim 8 depends from a claim that has been cancelled. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 8-9, 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dewar (5,803,539). Dewar discloses the use of a seat including a seat portion (12) and an attached seat back portion (14); a uniform top (22), having a lower end, fitted over the seat back portion and a uniform bottom (20), having a rearward end (48), fitted over the seat portion an engagement assembly (38) carried by one of the lower end of the uniform top and the rearward end of the uniform bottom; a complementary engagement assembly (40) carried the other of the lower end of the uniform top and the rearward end of the uniform bottom; and the engagement assembly detachably engaged to the complementary engagement assembly detachably engaging the lower end of the uniform top to the rearward end of the uniform bottom. In regards to claim 3, wherein the seat back portion includes a lower end attached to the seat portion and an opposing upper end; and the uniform top includes a neck opening (52) situated at the upper end of the seat back portion. In regards to claim 8, wherein the engagement assembly is supported at an end of the one of the uniform top and the uniform bottom and the complementary engagement assembly is supported at a confronting end of the other of the uniform top and the uniform bottom, see figures 2-4. In regards to claim 9, further comprising a seat including a seat portion (12) and seat back portion (10); a uniform top (22), having a lower end (46), sized shaped to fit over the seat back portion (10); a uniform bottom (20), having a rearward end (48), sized and shaped to fit over the seat portion; an engagement assembly carried by one of the lower

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end of the uniform top and the rearward end of the uniform bottom; a complementary engagement assembly carried by the wherein the engagement assembly is adapted to be assembly so as to detachably engage the lower end of the uniform top to the rearward end of the uniform bottom when the uniform top is fitted over the seat and attached. In regards to claim 11, wherein the uniform top includes a neck opening (52). In regards to claims 6 and 14, wherein the uniform top and the uniform bottom support an engageable straps (38,42,40) for securing the uniform top and uniform bottom to the seat.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewar in view of Bolewski (des.365, 958). Dewar shows the use of all the claimed invention but fails to show the use of the uniform top and bottom support uniform adornment that identifies a member of an organization. Bolewski teaches the use of the uniform top and bottom support uniform adornment that identifies a member of an organization. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the uniform top and bottom with adornment as taught by Bolewski, in order to show support of the organization.

Claims 2, 4-5 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewar in view of Estes (4,694,511). Dewar shows the use of all the claimed invention but fails to show the use of the uniform top includes sleeves and arm opening located on either side of the neck opening. Estes teaches the use of uniform top includes sleeves and arm opening (14) located on either side of the neck opening (13). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the uniform top with sleeves and arm opening located on either side of the neck opening as taught by Estes, in order for the occupant to put on the uniform cover.

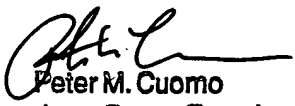
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to seat covers: U.S Pat. No. D454748, 4036524, 4047756, 4400030, 4232898, and 5707107.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG
April 1, 2004


Peter M. Cuomo
Supervisory Patent Examiner
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